IN THE COURT OF APPEALS OF IOWA

No. 4-267 / 93-1749

FILED
AUG 25 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF SARA JANE WILLIAMS AND WILLIE PAUL WILLIAMS

Upon the Petition of
SARA JANE WILLIAMS,

Appellee,

And Concerning
WILLIE PAUL WILLIAMS,

Appellant.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge.

The respondent challenges an order modifying the parties' dissolution decree by increasing the support paid for one of the daughter's college expenses. **AFFIRMED AS MODIFIED.**

James J. Roth, Dubuque, for appellant.

Allison M. Heffern of White & Johnson, P.C., Cedar Rapids, for appellee.

Considered by Donielson, C.J., and Sackett and Huitink, JJ.

PER CURIAM

On June 22, 1979, Sara Jane and Paul Williams were divorced. As stipulated by the parties the dissolution decree awarded Sara sole custody of the parties' two minor daughters: Shelley, born March 6, 1971; and Shannon, born November 30, 1972. The decree required Paul to pay child support in the amount of $400 per month. Pursuant to a June 1984 modification Paul's support obligation was increased to $460 a month. Paul's support obligation was to continue until Shannon graduated high school.

In the fall of 1989 Shelley was in her first year of college at the University of Iowa and Shannon was in her senior year of high school. Apparently the parties misunderstood the terms of the dissolution decree and Paul ceased making support payments after November 1989, despite the fact that Shannon was still in high school.

Sara paid for Shelley's tuition and living expenses during her first year of college and Shelley contributed by paying her gas, utilities, and telephone expenses. At the conclusion of Shelley's first year of college Sara approached Paul and sought his assistance in paying for the future college expenses both Shelley and Shannon would be incurring. Paul indicated he would pay one-half of Shelley and Shannon's future tuition expenses.

Commencing in September 1990 Paul paid for one-half of the children's tuition. Sara and the children continued to

pay for the remainder of the tuition, living expenses, books, and supplies needed by Shelley and Shannon while they attended college. To save on the children's living expenses Sara acquired a condominium in Iowa City for her daughters to live in while they attended school. She also provided vehicles for their use. Both of the children worked and contributed to their school and living expenses.

Sara filed an application for modification on May 4, 1992, seeking support for the children's college expenses. The hearing on Sara's application was held on October 18, 1993. At the time of the hearing Shelley had previously graduated from college in May 1993, and it was anticipated Shannon would complete her college education during the summer of 1994.

In its ruling the trial court found the estimated cost of attendance and living expenses for an in-state resident living off-campus at the University of Iowa during the 1993-94 school year was $9,350. Prorated, Shannon's tuition, books, supplies, and living expenses were expected to cost $981 a month. In addition to providing her daughters with the income from her interior design business, a condominium in which to reside and vehicles to drive, Sara borrowed $4,000 to pay for Shelley's education and $5,500 to pay for Shannon's educational expenses.

Prior to Sara's filing of an application for modification, Paul had paid approximately $4,450 toward his

daughters' tuition. Following the filing of the application he had paid $1,600 toward Shannon's tuition.

The trial court entered its ruling on October 25, 1993. The judge concluded the trial court had no jurisdiction to enter an order of support with respect to Shelley as it believed she had reached the age of twenty-two prior to the filing of Sara's application for modification. The trial court concluded it did have jurisdiction to enter a support order on behalf of Shannon for the nineteen month period running from May 4, 1992 (the date Sara filed her application) to November 30, 1993.[1]

The trial court concluded Shannon's reasonable college and living expenses were $980 a month and her total expenses for the 19-month period would be $18,620. Paul was ordered to pay 55% of these expenses in light of the prior imbalance which had existed between his and Sara's payment of their daughters' college expenses. The court reduced Paul's obligation by $1,600 to reflect the payments he had made since the filing of the application for modification. The trial court denied Paul's request that its order be prospective only. The court made its decision retroactive to the filing date of Sara's application for modification and it entered a judgment requiring Paul to

---

1. Sara has not appealed the trial court's decision and we do not address the issue of limits on the trial court's jurisdiction in this case.

pay $8,641 to Sara. Paul appeals. Our review of this equity action is de novo. Iowa R. App. P. 4.

I. Section 598.1(6).

"The completion of the child support obligation does not prevent the court from requiring child support for college expenses." In re Marriage of Linberg, 462 N.W.2d 698, 701 (Iowa App. 1990). Iowa Code section 598.1(6) identifies the financial obligations a court may impose on either parent in a dissolution action.

> The obligations may include support for a child who is between the ages eighteen and twenty-two years who is . . . in good faith, a full-time student in a college, university, or community college . . . .

Iowa Code § 598.1(6) (1993).

This statute was enacted to protect children of divorced parents from the possibility they would be denied support for an advanced education by the noncustodial parent. In re Marriage of Baker, 485 N.W.2d 860, 862 (Iowa App. 1992). Section 598.1(6) allows a trial court, in its discretion and under the proper circumstances, to order the support of children through college. Id. "Among the factors to be considered by the trial court when exercising its discretion are the financial condition of the parent, ability of the child for college work, age of the child, and whether the child is self-sustaining or not." Id.

II. Conclusions.

Paul agrees he has a responsibility to contribute to Shannon's college expenses. He asserts the trial court order requiring him to pay 55% of the college expenses is excessive in light of the parties' financial circumstances and the purported agreement he and Sara had regarding his obligation to provide support for their daughters while they were in college.

The duty to provide college support extends to both parents. Linberg, 462 N.W.2d at 701. While we modify the amount Paul should pay, we determine it was equitable under the circumstances of this case to require him to pay 55% of the college support. Paul had ceased making his court-ordered support payments for Shannon earlier than provided for in the dissolution decree. While this error may have been inadvertent, it unquestionably increased Sara's financial responsibilities. At the same time that Paul ceased making support payments Shelley had commenced college, and Sara bore nearly the entire financial burden associated with her first-year college expenses. While Paul later contributed toward the children's tuition between September 1990 and the date of the trial court hearing, his contributions were overall significantly less than those made by Sara.

We modify that portion of the trial court decision which addresses the anticipated costs of Shannon's education at the University of Iowa. We believe the amount

of $9,000 more accurately reflects the cost of her education for the period in question. Paul is ordered to pay 55% of this amount ($4,950) less the $1,600 he has paid toward Shannon's education since the filing of Sara's application for modification. Accordingly, the judgment entered by the trial court shall be modified to require Paul to pay Sara $3,350.

To the extent Paul asserts his purported oral "agreement" with Sara to pay for one-half of the tuition limits his obligation to pay any additional support, that argument is rejected. Sara's testimony revealed the existence of no binding agreement by which Paul's support obligation was limited. Furthermore, even if such an arrangement existed courts are not bound by agreements limiting or waiving a parent's obligation to provide support unless the court concurs enforcement of the agreement to be in the child's best interest. In re Marriage of Bonnette, 492 N.W.2d 717, 721 (Iowa App. 1992). Paul is not being penalized because of his adherence to his purported agreement to pay one-half of his daughters' tuition. Instead, the trial court, sitting in equity, reviewed all of the circumstances of the case and deemed it more equitable to require Paul to pay 55% of the college expenses Shannon would incur between May 1992 and November 1993.

Contrary to Paul's assertion, the trial judge was aware of Shannon's ability to contribute toward her educational

expenses. A court is not required to divide the financial obligation for college expenses equally between each parent and the child as was done in the case of In re Marriage of Smith, 351 N.W.2d 541 (Iowa App. 1984). Instead, a court is to look at the unique circumstances of each case to determine an equitable division of the responsibility for the college expenses. The trial court deemed it equitable for Paul to pay 55% of the expenses and to have Sara and Shannon contribute the remaining 45% according to their relative abilities. We find this conclusion reasonable and will not modify it on appeal.

The trial court acted well within its discretion in determining the modification order should be retroactive to the date the application was filed. Sara filed her application May 4, 1992, and a court ruling was not rendered until October 25, 1993--after Shannon had commenced her senior year of college. A court may make an increase in support payments retroactive to the filing date of the petition for modification. See In re Marriage of Lee, 486 N.W.2d 302, 306 (Iowa 1992). It was equitable under the circumstances of this case to make the modification order retroactive to May 4, 1992.

Paul claims the modification order is inequitable in light of his financial circumstances. As noted in the trial court ruling, Paul failed to provide the trial court with a required financial affidavit. As a result, the

record in this case does not support Paul's argument and it is rejected.

We have considered all other issues raised by the appellant in this appeal, even if not specifically addressed herein. We deny Sara's request for appellate attorney fees and assess the costs of this action against Paul.

AFFIRMED AS MODIFIED.